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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/436,348	11/09/1999	ANTONIO J. GRILLO-LOPEZ	012712-644	6492

909 7590 12/31/2003

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EXAMINER

SCHWADRON, RONALD B

ART UNIT	PAPER NUMBER
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1644

DATE MAILED: 12/31/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/436,348	GRILLO-LOPEZ ET AL.	
	Examiner	Art Unit	
	Ron Schwadron, Ph.D.	1644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) 3-14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1 and 2 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
 a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____ | 6) <input type="checkbox"/> Other: _____ |

1. Applicant's election without traverse of antiCD20 and chimeric antibody in Paper No. 18 is acknowledged.
2. Applicant's election without traverse of in vitro methods using antiCD20 antibody in Paper No. 18 is acknowledged.
3. Claims 3-6,10,14 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species (*in vivo methods of treatment with antiCD20 antibody*), there being no allowable generic or linking claim. Election was made **without** traverse in the Paper filed 9/26/2003.
4. Applicant's election with traverse of the species of the method not using the treatment of claim 6/7(part 1) in the Paper filed 9/26/2003 is acknowledged. The traversal is on the ground(s) that are stated. This is not found persuasive because it would require undue burden to search the additional species because the species are distinct for the reasons elaborated in the previous Office Action.

The requirement is still deemed proper and is therefore made FINAL.
5. Claims 7-14 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the Paper filed 9/26/2003.
6. It is noted that claims 10 and 11 should depend from claim 6, not claim 1 because they refer to steps found in claim 6, not claim 1. Said claims have been treated as if they depend from claim 6.
7. Claims 1 and 2 are under consideration.
8. Regarding the IDS filed 10/24/2003, said IDS has been filed *after a first office action on the merits*. The information disclosure statement filed 10/24/2003 fails to comply with 37 CFR 1.97(c) because it lacks a statement as specified in

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37 CFR 1.97(e) or the fee set forth in 37 CFR 1.17(p). It has been placed in the application file, but the information referred to therein has not been considered.

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Freedman et al.

Freedman et al. disclose use of antiCD20 antibody to treat bone marrow in vitro before transplantation of said bone marrow into a patient suffering from B cell non-Hodgkin's lymphoma (see abstract and page 785, second column, first complete paragraph). The treatment depletes CD20 positive lymphoma cells (see page 789, first column, first complete paragraph). Friedman et al. disclose that said treatment can be used for patients who are at a high risk of relapse of the cancer (see abstract).

11. No claim is allowed.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dr. Ron Schwadron whose telephone number is (703) 308-4680. The examiner can normally be reached Monday through Thursday from 7:30 to 6:00. A message may be left on the examiners voice mail service. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ms. Christina Chan can be reached on (703) 308-3973. Any inquiry of a general nature or relating to the status of this application should be directed to the Group 1600 receptionist whose telephone number is (703) 308-0196.



RONALD B. SCHWADRON
PRIMARY EXAMINER
GROUP 1600 1644

Ron Schwadron, Ph.D.
Primary Examiner
Art Unit 1644